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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re La.M. et al., Persons Coming
Under the Juvenile Court Law.

C061743

SACRAMENTO COUNTY DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

(Super. Ct. Nos.
JD226202, JD226205)

Plaintiff and Respondent,

v.

L.C.,

Defendant and Appellant.

L.C., the mother of minors La.M. and Daj.C., appeals from an order terminating her parental rights.¹ (Welf. & Inst. Code, § 366.26; all further statutory references are to this code unless otherwise indicated.) She contends that proper notice was not given under the Indian Child Welfare Act of 1978 (25 U.S.C. § 1901 et seq.) (ICWA), and that the beneficial

¹ This case is a companion case to *In re L.C.* (Aug. 10, 2008, C061038) [nonpub. opn.], which involved two of mother's other children.

parent-child relationship and sibling relationship exceptions to adoption apply. We reject her second contention, but vacate the order terminating parental rights and remand the matter to the juvenile court for further proceedings under ICWA.

FACTUAL AND PROCEDURAL BACKGROUND

On August 1, 2007, the Sacramento County Department of Health and Human Services (the Department) filed a section 300 petition as to six-month-old La.M. and seven-year-old Daj.C., alleging that mother had engaged in domestic violence with both her husband and her current live-in boyfriend since at least 2004, in the presence of the minors and their siblings (L.C., aged 3; L.M., aged 4; Dan.C., aged 11; Das.C., aged 13; and L.A., aged 16).

The Department's detention report stated that mother's current boyfriend, M.M., was the father of La.M.; mother's husband, L.Mi., was the father of L.M.; and the identities and whereabouts of the other children's fathers were unknown. Despite the domestic violence between mother and M.M., she continued a relationship with him and refused to secure a restraining order against him; he denied any domestic violence or need for services.

An addendum report stated that mother had told the Department M.M. was no longer living with her, but on an unannounced home visit on August 10, 2007, the social worker had found him there along with her. The social worker also detected beer cans and a strong odor of marijuana at the residence.

At the detention hearing on August 16, 2007, mother told the juvenile court that she was currently divorcing L.Mi. (who was the father of L.C., not of L.M.). She confirmed that M.M., her boyfriend, was the father of La.M. Her ex-husband D.C. was the father of Dan.C. and Das.C. She had never been married to the fathers of L.M. and L.A.

The juvenile court ordered the minors detained (except for L.A., who was released to mother under the Department's supervision). Because mother claimed Blackfeet and Cherokee heritage, the court ordered the Department to give ICWA notice to those tribes and to the Bureau of Indian Affairs (BIA).

On August 23, 2007, Carol Michie, a paralegal employed by the Department, filed a declaration on ICWA investigation and notice. According to Michie, mother claimed Indian ancestry on both sides of her family but did not think her parents would have any further information. Michie did not indicate any attempt to contact the maternal grandmother.

Michie attached the notices and supporting documents she had sent on August 22, 2007, to the BIA, the Blackfeet tribe, and the three federally recognized Cherokee tribes. These documents refer to the maternal grandmother by the surname Beaver (apparently her maiden name, though the notices do not say so) and give her purported address in Sacramento.

The Department's jurisdiction/disposition report, prepared for a hearing to be held on September 5, 2007, recommended that all the minors be adjudged dependents of the juvenile court and remain in out-of-home placement (except for L.A., currently in

the care of his maternal aunt), and that mother receive reunification services.

Under the heading "Collateral Contacts," the report describes the social worker's telephone interview with the maternal grandmother (the family's alleged Indian heritage was not discussed). Her last name is given as Braziel, not Beaver. She is said to live at a different address from that furnished to the tribes. Her telephone number, which was not provided to the tribes, is also given.

On September 14, 2007, Department paralegal Michie filed a declaration of receipt of ICWA return receipt cards and correspondence. All responding tribes stated they had been unable to verify that the children and adults whose names they had been given had Indian ancestry.

On September 19, 2007, the juvenile court held a jurisdiction/disposition and paternity hearing and set the matter for a pretrial/jurisdiction/disposition hearing and a contested jurisdiction/disposition hearing.

At the pretrial/jurisdiction/disposition hearing on October 3, 2007, the juvenile court was informed that the required tribes had received ICWA notice.

On October 16, 2007, and November 7, 2007, Michie submitted further declarations averring that the BIA and all noticed tribes (Cherokee Nation of Oklahoma, Eastern Band of Cherokee, United Keetoowah Band of Cherokee Indians, and Blackfeet Tribe) had now responded. The tribes had stated that the minors were not Indian children.

In a further addendum report, the Department noted that although mother was participating in services and making some progress, she continued to violate court orders by maintaining contact with M.M., who had not participated in services and repeatedly tested positive for alcohol and drugs.

On November 14, 2007, the juvenile court held a hearing on the applicability of ICWA. The court found that notice had been properly given, the tribes had responded negatively, and ICWA did not apply.

The juvenile court held a contested jurisdiction/disposition hearing on January 11, 2008. The court adjudged the minors dependents and committed La.M and Daj.C. to the Department's custody for out-of-home placement, while ordering reunification services for mother. The matter was set for a permanency hearing as to La.M. and Daj.C. on April 4, 2008.

The Department's six-month review report recommended terminating mother's reunification services because she had not benefited from them: she still allowed unauthorized contact between M.M. and her children, she denied her ongoing relationship with M.M., and she minimized the domestic violence in her life. The report stated the following as to La.M. and Daj.C.: both had demonstrated a strong bond to each other and to their caregiver; Daj.C. said she would like to live with the caregiver. Both were healthy and sociable, and were meeting all developmental milestones. Daj.C., who was in second grade, had been having academic and behavioral difficulties in school but had improved significantly within the past few months; she had a

current Individualized Education Plan (IEP). Visits with mother had gone well, and the minors showed a bond to her; they also showed a bond with the siblings they saw at the visits. The concurrent plan was for the minors to be adopted by their current caregiver.

After a contested permanency hearing on July 14 and 15, 2008, the juvenile court terminated mother's reunification services, found it likely that La.M. and Daj.C. would be adopted, and ordered adoption as the permanent plan for them.

The Department's selection and implementation report stated, as to La.M. and Daj.C.:

Both minors were physically healthy, with no complaints except for Daj.C.'s eczema. Both were meeting all developmental milestones.

La.M. (now almost one year nine months old) could say "thank you," "hi," and "bye"; responded to his caretaker and Daj.C. with smiles and eye contact; was alert and aware of his surroundings; and played appropriately with his siblings and other children. He was not receiving early intervention services and did not appear to need any.

Daj.C. (now eight years two months old) was in third grade, but currently performed at a high first grade level; she still had an IEP and was going to a learning center to catch up, and the school expected her to be on grade level in a few months. She had had trouble socially at school, sometimes playing aggressively and getting into verbal altercations; she was now attending counseling once a week, and the initial session had

gone well. When she was first placed with her present caretaker the school called frequently about her behavior, but the calls had diminished lately because her behavior had improved. She was affectionate toward her brothers, especially La.M. She understood what adoption meant. If she could not go home with mother, she wanted to stay with her current caretaker and be adopted.

La.M. was currently placed with Daj.C. because she had requested that placement; they appeared closely bonded. They visited with their siblings L.M. and L.C. once a week, when mother visited. The foster parent of La.M. and Daj.C. intended to maintain that sibling bond if the minors were adopted.

La.M. had seen his two older sisters, Das.C. and Dan.C., who lived out of state, in July; Daj.C. occasionally spoke to the older sisters on the phone and asked about them sometimes.

The foster parent of La.M. and Daj.C. had had them in her home since August 2007 and wanted to adopt them. She had adopted before and was familiar with the process. She had gone through preliminary screening and had been referred for a home study. She appeared willing and able to deal with Daj.C.'s problems. She was prepared to meet the minors' emotional, physical, and psychological needs. She was in contact with the foster family of L.M. and L.C. and was willing to keep the minors in contact with them.

Mother had had twice-weekly supervised visits with the minors, but as of September 15, 2008, the visits had been reduced to once a week because the minors were "loud and crazy,"

with little attempt at control by mother, who brought unauthorized people with her almost every time. Mother had been warned that if she continued to do this the visits would be suspended. Although the visits seemed to go well, the minors appeared more interested in each other than in mother. Mother had recently missed a visit because of an arrest for domestic violence.

The likelihood of La.M. and Daj.C.'s being adopted by their current caretaker if parental rights were terminated was excellent. The termination of parental rights and adoption were recommended.²

Mother's pretrial statement for the selection and implementation hearing objected to the termination of parental rights and the adoption of the minors. Mother disputed the Department's characterization of her visits with the minors. She also asserted that "having these children separated from each other and their mother would be detrimental to the fabric [sic] of these minors."

On November 19, 2008, due to a failure of notice as to the alleged father of Daj.C., the juvenile court continued the

² The report also stated: "The children [i.e., La.M., Daj.C., L.M., and L.C.] are specifically adoptable, as they are part of a siblings set and [Daj.C.] is over the age of seven." However, this finding later became obsolete because the selection and implementation hearing as to La.M. and Daj.C. was continued while that as to L.M. and L.C. was held as originally scheduled. (*In re L.C.*, *supra*, C061038, at pp. 18-19.)

selection and implementation hearing for La.M. and Daj.C. to March 18, 2009.³

On March 18, 2009, the juvenile court set the matter for a contested selection and implementation hearing on March 20, 2009.

Counsel for the parties filed a stipulation that if Daj.C. were called to testify, she would say: "If [she] can't be with her mother she ([Daj.C.]) really wants to stay where she is. [¶] She feels close to her mom but she feels really close to her care giver. [¶] [Daj.C.] plans to never have to think about all the fighting she saw ever again. [¶] [Daj.C.] is very happy where she is and she doesn't want to have to leave because she has friends, is doing well in school, and likes her family."

At the contested selection and implementation hearing, mother did not testify or put on evidence. Her counsel asserted, however, that mother believed "the children will suffer from a significant degree of mental emotional harm [sic] from having their relationship with the mother severed as a result of this adoption. She also believes that -- I know that there's the four siblings that are together [i.e., La.M., Daj.C., L.M., and L.C.] but then also other siblings [i.e., Dan.C. and Das.C.], she believes that there's a significant

³ The selection and implementation hearing as to L.C. and L.M. occurred on January 23, 2009. The juvenile court terminated mother's parental rights as to them and ordered adoption as the permanent plan for them. (*In re L.C., supra*, C061038, at p. 8.)

relationship between them, and that by severing the ties with them that would cause another degree of emotional harm."

The juvenile court adopted the Department's recommendations to terminate mother's parental rights and order a permanent plan of adoption. The court set out its supporting findings as follows:

"I do find by clear and convincing evidence that it's likely the children, [La.M.] and [Daj.C.], will be adopted if parental rights are terminated. The Court does find that there is insufficient evidence to determine that the termination of parental rights would be detrimental to the children as defined by the Welfare & Institutions Code. The law requires . . . not only that there be a bond between the parents and the child, which I think is evident here by the parents and their statements, but as well that the bond be between the child and the parent, and that the nature of the relationship must be established by maintaining regular visitation and contact with the child and that a parent and child relationship and bond be in existence such that it promotes the well-being of the child to such a degree that it would outweigh the well-being the child would gain in a permanent home with a new adoptive parent.

"And in this regard certainly the mother has established that she has maintained regular contact and visitation with these children. And as I have indicated, I think she is very bonded to her children, but the description of the visits contained in the social worker's report is that the visits go well, but the children appear more interested in each other than

[in] participating with their mother, and that as well [mother] continues to bring friends and relatives to visits who have not been approved to visit with the children. The visits at one point between some of the children were described as loud and crazy. That the mother's able to bring little, if any, control to the visits. There have been a few missed visits or at least one as a result of [mother] becoming incarcerated for domestic violence, which is certainly notable since it's one of the underlying allegations at the very outset of this case.

"[¶] . . . [¶]

"I did also want to indicate for the record that in considering the adoptability of the children the Court did consider whether or not there's a substantial sibling relationship that exists and whether or not there's clear evidence that there would be substantial interference with that relationship such that [La.M.] and [Daj.C.] should forgo adoption and be placed in a lesser permanent plan, if you will, to allow those relationships to continue. And again there's a lack of information and evidence presented by the parents to establish that there will be substantial interference with that relationship as well as to establish the extent of the sibling relationship.

"I did hear testimony from [the social worker] that [La.M.] even at his young age asks about his brother, which is certainly something the Court considers in terms of [La.M.] being aware that he has brothers and being desirous of, at least, knowledge or information as to what's going on with his brothers. But

there's absolutely no information in front of me that terminating parental rights is going to prevent ongoing sibling contact that maybe [sic] consistent with the best interest of the children."

DISCUSSION

I

Indian Child Welfare Act Notice

In *In re L.M., supra*, C061038, we reversed the order terminating parental rights as to L.M. and L.C. for failure of ICWA notice because the Department did not interview the maternal grandmother about the children's alleged Indian ancestry and to provide the tribes with her correct name and address. (*Id.* at pp. 8-15.) Mother contends that since the juvenile court's erroneous finding that adequate ICWA notice had been given applies also to La.M. and Daj.C., we must reverse again on this ground. The Department properly concedes the point. We shall reverse and remand for further proceedings.

On remand, the juvenile court is directed to vacate its order terminating parental rights and to revisit the issue of ICWA notice compliance after the Department has interviewed the maternal grandmother about the children's alleged Indian ancestry and has given the tribes her correct name and address. If the court then finds that ICWA notice has been properly given and the tribes have determined the children are not Indian children, the court shall reinstate its order terminating parental rights. If any tribe determines that the children are

Indian children, the court shall proceed in accordance with ICWA.

II

The Exceptions to Adoption

In *In re L.M., supra*, C061038, after reversing on the ICWA issue, for the guidance of the juvenile court and the parties on remand, we reached the merits of mother's argument against adoption. (*Id.* at pp. 15-19.) We shall do the same here.

Mother contends no substantial evidence supports the juvenile court's findings that (1) the minors would not benefit from maintaining a relationship with mother, and (2) adoption would not cause a substantial interference with their sibling relationships. In other words, she contends she proved the existence of the beneficial parent-child relationship and sibling relationship exceptions to adoption. (§ 366.26, subds. (c) (1) (B) (i), (c) (1) (B) (v).) We disagree.

At the selection and implementation hearing, the juvenile court must choose one of four alternative permanent plans for a minor; the permanent plan preferred by the Legislature is adoption. If the minor is adoptable, the court must terminate parental rights absent a showing of detriment to the minor. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1368.)

If a parent claims that one of the statutory exceptions to termination of parental rights applies, the parent has the burden of establishing that exception. (Cal. Rules of Court, rule 5.725(e) (3); *In re Zachary G.* (1999) 77 Cal.App.4th 799, 809 (*Zachary G.*).) We uphold a juvenile court's ruling

declining to find an exception to termination of parental rights if supported by substantial evidence. (*Zachary G.*, *supra*, 77 Cal.App.4th at p. 809.)

A. The Beneficial Parent-Child Relationship Exception

To prove that the beneficial parent-child relationship exception applies, the parent must show that she "ha[s] maintained regular visitation and contact with the child and the child would benefit from continuing the relationship."

(§ 366.26, subd. (c)(1)(B)(i).) It is not enough simply to show "some benefit to the child from a continued relationship with the parent, or some detriment from termination of parental rights." (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1349 (*Jasmine D.*)). There must be a significant, positive, emotional attachment between parent and child. (*In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419 (*Beatrice M.*)). But even this may be insufficient to defeat adoption if a child looks to a prospective adoptive parent to meet his or her needs.

(*Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.) "Because a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child's needs, it is only in an extraordinary case that preservation of the parent's rights will prevail over the Legislature's preference for adoptive placement." (*Jasmine D.*, *supra*, 78 Cal.App.4th at p. 1350.)

Here, though mother established the existence of regular contact, visitation, and bonding with the minors, she did not show that these factors outweighed the benefit to the minors

that adoption would provide. Mother offered no evidence to rebut the Department's showing that the minors were more interested in each other than in mother during the visits, or that mother's visits had had to be reduced from twice a week to once a week because she failed to control the proceedings and repeatedly brought unauthorized adults to them, or that she had missed at least one visit due to incarceration for domestic violence.⁴ (The evidence she now cites on this issue comes almost entirely from proceedings long prior to the selection and implementation hearing.) The evidence also established that the minors looked to their foster parent (who intends to adopt them) to meet their needs, not to mother. (*Zachary G.*, *supra*, 77 Cal.App.4th at p. 811.) Thus, there is substantial evidence

⁴ Mother asserts that if she failed to meet her burden on this issue, the fault lies with the Department for restricting her visitation; moreover, "in the absence of a showing of detriment to the children," the Department's act violated substantive due process because it weakened mother's ability to make the necessary showing under section 366.26, subdivision (c)(1)(B)(i). Since mother did not raise these arguments in the juvenile court, they are forfeited. In any event, the Department's findings that the minors were "loud and crazy" during visits, mother failed to control them, and that mother routinely brought unauthorized persons to the visits were "a showing of detriment to the children," which mother did not rebut.

Mother observes that this court reversed a termination of parental rights order where the Department had unreasonably restricted visitation. (*In re David D.* (1994) 28 Cal.App.4th 941.) But there, the social worker, who had poisoned the minors' minds against the mother, permitted her only one visit in two years. (*Id.* at pp. 952-955.) Here, mother continued to receive regular visitation as mandated, merely less often.

that the bond between mother and the minors is not so emotionally significant as to “outweigh the well-being the [minors] would gain in a permanent [adoptive] home.” (*Beatrice M.*, *supra*, 29 Cal.App.4th at p. 1418, quoting *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

Mother cites *In re S.B.* (2008) 164 Cal.App.4th 289 (*S.B.*) for the proposition that she did not have to show the minors had a “primary attachment” to her. (*Id.* at pp. 299-300.) However, the juvenile court here did not purport to rely on any such standard. Furthermore, mother’s relationship to the minors (especially La.M., who has lived the greater part of his life outside mother’s custody) is far less close than that of the parent and child in *S.B.*, *supra*, 164 Cal.App.4th 289, and her compliance with the court’s orders and the conditions of visitation is far less satisfactory (see *id.* at pp. 298-301). Thus, *S.B.* does not assist her.

B. The Sibling Relationship Exception

The sibling relationship exception to adoption applies if “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit

of legal permanence through adoption." (§ 366.26, subd. (c) (1) (b) (v).)

As the juvenile court found, there is no evidence to support mother's premise that adoption would substantially interfere with the minors' sibling relationships. The evidence on this issue is that (1) the minors wish to continue their relationships with their brothers L.M. and L.C. and the minors' foster parents intend to maintain that sibling bond, and (2) Daj.C. sometimes speaks to her older sisters Das.C. and Dan.C. (who live out of state) over the telephone or asks about them.

Mother does not discuss the evidence as to L.M. and L.C. Instead, she asserts only that the termination of parental rights will interfere with Daj.C.'s sibling bond with her sisters. But she cites no evidence supporting her position. She merely speculates that she might someday regain custody of Daj.C.'s sisters. This speculation is insufficient to meet mother's burden on appeal.

DISPOSITION

The matter is reversed and remanded to the juvenile court with directions that the court (1) vacate its order terminating mother's parental rights, and (2) order the Department to interview the maternal grandmother as to the minors' Indian ancestry and to provide new ICWA notice that includes her correct name and address. If, following such notice, any of the tribes determine that the minors are Indian children as defined

by ICWA, the court shall conduct a new review hearing in conformity with all the provisions of ICWA. If, however, the tribes determine that the minors are not Indian children, or if no response is received indicating the minors are Indian children, the court shall reinstate the vacated order.

RAYE, J.

We concur:

SCOTLAND, P. J.

NICHOLSON, J.